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Promotion and protection of human rights: human rights situations and reports of special rapporteurs and representatives

Letter dated 24 October 2012 from the Permanent Representative of Myanmar to the United Nations addressed to the Secretary-General

I have the honour to transmit herewith a memorandum on the situation of human rights in the Republic of the Union of Myanmar.

I should be most grateful if the present letter and its annex could be circulated as a document of the General Assembly, under agenda item 69 (c).

(*Signed*) Kyaw Tin
Ambassador
Permanent Representative

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Please recycle

Annex to the letter dated 24 October 2012 from the Permanent Representative of Myanmar to the United Nations addressed to the Secretary-General

Memorandum on the situation of human rights in the Republic of the Union of Myanmar

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I. Introduction

1. A country-specific resolution on Myanmar was first tabled by the European Union in the Third Committee of the General Assembly in 1991. Since then it has become a ritual for the European Union to do the same on a yearly basis.

2. Myanmar has all along rejected the resolution and dissociated itself from the adoption thereof. This approach is taken for a couple of reasons. Firstly, as a matter of principle, Myanmar rejects country-specific resolutions. Secondly, the resolution did not reflect nor recognize the realities on the ground. It mainly relies on unsubstantiated information leading to erroneous conclusions. The draft resolutions are usually influenced by the recommendations and observations of the Special Rapporteur on the situation of human rights in Myanmar, whose views are usually focused only on the perspective of ideal standards of human rights without giving due consideration to the broader aspects of national reconciliation and peace and stability of the country.

3. This memorandum is intended to provide States Members of the United Nations with objective information on the human rights situation in Myanmar. It is our hope that it will be able to rectify the misperception and misunderstanding that may still persist about Myanmar.

II. State of the nation

4. President U Thein Sein addressed the sixty-seventh session of the General Assembly on 27 September 2012. In his address, he highlighted the country's political and socioeconomic progress as follows:

(a) The judiciary, the armed forces, the national races, political parties, civil societies and the people at large have been taking tangible steps in the democratic transition and reform process;

(b) A democratic Government with a strong, viable Parliament following the practice of checks and balances is now firmly in place;

(c) The encouraging progress includes the granting of amnesties to prisoners, the return with dignity of exiled political forces, the successful convening of 2012 by-elections in a free, fair and transparent manner, the abolition of censorship of the media (the fourth estate), freedom of Internet access, the establishment of workers' and employers' organizations and the increased participation of the people in the political process;

(d) The participation of Daw Aung San Suu Kyi in the Pyithu Hluttaw (Parliament), not only in her capacity as a Member of Parliament but also as Chair of the Rule of Law and Stability Committee;

(e) The legislative body has been progressing well and functioning more effectively at each session and the Parliament has now been able to adopt landmark laws through democratic practices;

(f) Laws and by-laws are being promulgated bearing in mind that economic development must not lead to the widening of the gap between rich and poor; that citizens' rights must be protected; that the natural environment must be preserved; and that workers should enjoy rights in line with international standards;

(g) The emergence of democratic characteristics such as growing participation of different political forces and their mutual tolerance, magnanimity, expansion of the scope of political participation, representation and accountability and the ability to foster a new political culture of patience and dialogue;

(h) Ceasefire agreements have been achieved with 10 armed groups; consultation with the only remaining group is ongoing;

(i) In connection with the situation in Rakhine State, all people inhabiting Myanmar, regardless of race, religion or gender, have the right to live in peace and security. The issue will be resolved by taking short-term and long-term measures through a multifaceted approach taking into account political, economic and social aspects. Myanmar has the right to secure its borders and also to safeguard and protect its sovereignty and Myanmar will do its utmost to solve the issue in accordance with international norms;

(j) The need for the understanding and support of the international community and for Myanmar to be looked at from a different and new perspective.

III. Situation in Rakhine State

5. The communal violence in Rakhine State was triggered by two incidents of cross-communal crime in May and June 2012. The Government took legal actions against the perpetrators of the criminal acts. At the same time, the Government has taken measures under existing rules and laws to ensure that such incidents do not happen again.

6. The Government has exercised maximum restraint in restoring law and order in those particular places where the communal violence broke out. As such, Myanmar strongly rejects the accusations made by some quarters that abuses and excessive use of force were perpetrated by the authorities in dealing with the situation.

7. Peace and stability are indispensable for the ongoing democratization and reform process in Myanmar. National solidarity and racial harmony among the various national races is vital for the perpetuation of the Union. Myanmar is a multi-faith country where Buddhists, Christians, Muslims and Hindus have been living together in peace and harmony for centuries. The State Constitution guarantees religious freedom.

Establishment of the Investigation Commission

8. To probe into the incident and to provide suggestions in the national interest, a 27-member Investigation Commission was formed on 17 August 2012 under Notification No. 58/2012 of the President's Office. This national-level independent investigation commission is made up of representatives from all strata of society, including widely respected personalities from the Buddhist, Islamic, Christian and Hindu faiths. Upon completion of its task, the Commission will submit its report directly to the President. The Commission's tenure is extendable, if necessary.

9. The Investigation Commission is empowered to investigate the following matters so as to expose the incident and present suggestions along with reviews:

(a) The causes of the conflict that undermine peace and stability;

(b) Casualties, property losses and other damages due to the conflict;

(c) Measures taken for restoring peace and stability;

(d) Relief and rehabilitation tasks;

(e) Short-term and long-term measures to be taken to end the conflict;

(f) Exploration of ways and means for peaceful coexistence between different creeds and ethnic groups;

(g) Suggestions for law enforcement;

(h) Suggestions for economic and social development.

Visit by United Nations officials

10. A United Nations team led by Vijay Nambiar, Special Adviser to the Secretary-General on Myanmar, and Ashok Nigam, Resident Coordinator, visited Rakhine State on 13 and 14 June 2012. Tomás Ojea Quintana, the Special Rapporteur on the situation of human rights in Myanmar, visited Rakhine State from 31 July to 1 August 2012 and observed the situation there. A group of foreign diplomats who are resident in Myanmar, including those from the embassies of the Organization of Islamic Cooperation (OIC) member States in the country, visited Rakhine State from 31 July to 1 August 2012 and observed the situation there. On 31 July 2012, the Director of Operations for the Office for the Coordination of Humanitarian Affairs, John Ging, accompanied by the Resident Coordinator, visited Sittwe and met with senior Government officials, partners and the affected population.

Visits by other dignitaries

11. The Minister for Foreign Affairs of Turkey, Ahmet Davutoglu, visited relief camps in Rakhine State on 10 August and provided assistance to the affected population there. He was joined on the trip by his wife, Sare Davutoglu, and by Emile Erdogan (wife of the Prime Minister of Turkey) and Sumeyye Erdogan (daughter of the Prime Minister of Turkey). They were received in Sittwe (capital of Rakhine State) by the Union Minister for Border Affairs and senior Government officials. The delegation visited relief camps in Sittwe and met with Government officials, the United Nations Resident Coordinator and representatives of United Nations agencies and partners. The Turkish Red Crescent Society has a memorandum of understanding with the Myanmar Red Cross Society to provide relief assistance to the affected population.

12. Jusuf Kalla, former Vice-President of Indonesia and current President of the Indonesian Red Cross Society, visited Rakhine State on 11 August. He was joined by the Assistant Secretary-General for Humanitarian Affairs of OIC, Atta el-Manna Bakhit, the President of the Red Crescent Society of Qatar, Venkatesh Manner, the Secretary-General of the Indonesian Red Cross Society and the Ambassador of Indonesia to Myanmar. They also provided assistance to the affected population there. On 8 September 2012, Mr. Kalla visited Myanmar again. During the visit, he signed a memorandum of cooperation with the President of the Myanmar Red Cross Society to provide short-term and long-term assistance for the affected population in Rakhine State.

Invitation to the Secretary-General of the Organization of Islamic Cooperation

13. The Minister for Foreign Affairs of Myanmar has invited the Secretary-General of OIC to come to Myanmar and visit the affected areas as soon as possible to see for himself the situation on the ground. The letter of invitation is dated 3 August 2012. In the invitation letter, the Minister for Foreign Affairs assures the Secretary-General that the Government of Myanmar will continue to guarantee freedom of religion and the rights of citizens without discrimination as to their race or creed, in accordance with the Constitution.

14. A three-member OIC delegation headed by Ufuk Gokcen, the Permanent Observer to the United Nations in New York, visited Myanmar from 6 to 15 September 2012. The delegation visited relief camps in Rakhine State.

Press release by the Government

15. The Ministry of Foreign Affairs of Myanmar issued a press release on 21 August 2012, reflecting the ameliorating situation in Rakhine State. The following points are highlighted in the press release:

(a) The violence that broke out in Rakhine State recently was neither a conflict between the two religious groups nor a humanitarian issue;

(b) Eighty-eight people from both communities lost their lives;

(c) During the riots, houses and religious buildings belonging to both communities were burned down;

(d) It is clear that the incidents were not related to any kind of religious persecution or discrimination;

(e) The Government took immediate action, with full restraint, to restore law and order and stability in places where riots broke out. As a result, the overall situation in Rakhine State is now returning to normalcy;

(f) The Government has never practised a policy of violence against any religious faith. Therefore, the Government totally rejects accusations made by some organizations that it is practising such a policy of abuses;

(g) The Government has been working closely with the international community on relief and rehabilitation measures for victims of both communities in a non-discriminatory and transparent manner. The Government also welcomes international relief assistance if it is non-discriminatory and intended for both communities;

(h) With a view to exposing the real cause of the incident and giving advice in the national interest, a 27-member Investigation Commission was formed on 17 August 2012;

(i) The incidents in Rakhine State were of a sectarian nature and are purely the internal affairs of a sovereign State. Therefore, Myanmar will not accept any attempt to politically regionalize or internationalize this issue as a religious one. Such an attempt would not contribute to finding solutions to the matter at hand, it would only further complicate the issue;

(j) Myanmar is a country where Buddhists, Christians, Muslims and Hindus have been living together in unity and harmony throughout history.

Provision of humanitarian assistance

16. On 25 August 2012, the Indonesian Red Cross sent personnel to conduct a needs assessment. They provided relief assistance to the affected population in Rakhine State. On 29 August 2012, the Government of India donated $US 200,000 to Myanmar to be used in rehabilitation and resettlement work in Rakhine State. On 29 August 2012, the Minister for Foreign Affairs of Australia, Bob Carr, announced that Australia would provide 1 million Australian dollars in emergency aid to purchase clothing, blankets and basic supplies for around 14,000 affected people in Rakhine State. He said that the funds would be administered by CARE Australia and delivered to "those in need regardless of faction or ethnic origin". On 30 August 2012, a delegation led by Arifin Muh. Hadi, head of disaster management of the Indonesian Red Cross Society, visited Rakhine State to observe the situation and provide relief assistance to the affected population. On 4 September 2012, Saudi Arabia donated $US 1 million to provide essential health and education services in Rakhine State. Relief organizations from Turkey, Kuwait and Qatar have offered to deliver relief assistance to the affected population in Rakhine State.

17. Humanitarian assistance to the affected people is being provided without any interruption. Such assistance from any quarter for both the communities in Rakhine State is always welcomed. The Government has been facilitating this kind of assistance for the people and will continue to do so.

IV. Religious harmony

18. Nearly 90 per cent of the total population of Myanmar are Buddhists. However, religious harmony and freedom in Myanmar are well known to the outside world. Fully cognizant of the importance of religious freedom in a multicultural country, the Government provides equal treatment to the followers of different faiths. The previous two Constitutions provided for safeguards against religious discrimination and religious intolerance. It is also the case with the current State Constitution. This constitutional right is evident in the fact that pagodas, churches, mosques and Hindu temples are seen side by side throughout the country, testifying to the religious harmony and tolerance.

19. As interfaith harmony is a time-honoured tradition among the communities, the Government encourages the people to continue to preserve their traditions and practices. This is being done through continuous contacts with the respective religious leaders and the provision of necessary assistance in both financial and material terms. In the case of followers of the Islamic faith, traditional pilgrimages are being facilitated yearly by the Government.

V. Media reform

20. Myanmar is now implementing a three-step media reform process. As a first step, censorship requirements on domestic journals and periodicals have been relaxed since 20 August 2012, thereby paving the way for the freedom of the press. At the same time, the domestic media have been encouraged to assume responsibility and accountability while enjoying that right.

21. In the next step, the Myanmar Core Press Council was established with a view to developing a draft media law which would replace the existing Registration of Printers and Publishers Law (1962). The mandates of the Council include, among others, to develop a new draft law, to protect media people, to develop a code of ethical conduct for journalism and to settle press disputes. Additionally, a governing body has been formed recently to transform the three State-run newspapers into public service media by adopting necessary policies and programmes, and to realize the principles of public service media.

22. In the final stage of the media reform process, the Government envisages the private media sector exercising its freedoms with accountability and in a balanced and harmonious manner when the new print media law takes effect.

23. A dynamic fourth estate is a prerequisite for building mutual understanding and trust between the Government and the people. Open and responsible media are crucial for economic development, national reconciliation and better integration with the international community.

24. President U Thein Sein, in his press encounter with local and foreign media representatives on 21 October 2012, said that the media serve as the eyes and ears of the Government and that it is necessary for the Government and media to comprehend each other's views and outlooks. He went on to say that, in order for the Government's activities to be successfully carried out, they must be complemented by the fourth estate. He also pointed out that the media should be fully informed of the activities undertaken by the Government and the challenges it faces so that they can provide scrutiny and advice. The Government, in turn, will take the media's advice into consideration in launching further activities. The President also mentioned that media should play a central role in objectively informing the public of the Government's activities.

25. The ongoing media reform is duly recognized domestically and internationally as one of the most dramatic reform measures. In this regard, a well-known foreign commentator on South-East Asian affairs has recently given credit to Myanmar for promoting democracy, human rights and press freedom simultaneously.

VI. Promotion and protection of human rights

26. Myanmar attaches great importance to the promotion and protection of human rights. It accords priority to the right to development and has been striving for the equitable and balanced development of the country. Section 347 of the Constitution states that the Union shall guarantee any person the enjoyment of equal rights before the law and shall equally provide legal protection.

27. One of the institutional developments in this area is the establishment on 5 September 2011 of the 15-member Myanmar National Human Rights Commission. The Commission is composed of independent experts from all strata of society, including those from the various national races who earn the respect of their communities. It tackles complaints on alleged human rights violations filed by people or organizations within or outside the country. The Commission works independently. It plays an increasing role in promoting human rights in the country. It is also expanding its relations and cooperation with regional and international human rights organizations.

28. Myanmar submitted its first report to the Working Group on the Universal Periodic Review of the Human Rights Council in January 2011. It is now in the process of implementing the recommendations adopted by the Working Group. Myanmar has become a State party to some core human rights instruments. Recently, Myanmar acceded to the Convention on the Rights of Persons with Disabilities and also to the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography.

29. In order to promote civil and political rights, the Government has promulgated the Peaceful Demonstration and Gathering Law. Similar to the practice in other democratic countries, gatherings or demonstrations need a prior permission from the authority concerned in accordance with the prescribed law and its by-law. The recent increase in the number of peaceful demonstrations across the country clearly reflects the prevalence of freedom of expression and assembly in the country.

30. Myanmar is also undergoing legislative reform. Existing laws which are not in line with the State Constitution and the applicable international norms and standards are being reviewed for a possible amendment or repeal or replacement. This task is being accelerated in keeping with the national capacity and priorities.

VII. Prevention of military recruitment of underage persons

31. The Government places a high priority on the prevention of underage recruitment. In implementation thereof, instructions have been issued to all military units, severe penalties are imposed on the perpetrators, an adequate legal framework is in place and the law is being strictly enforced.

32. To bring Myanmar's policy implementation to a higher level and also within the framework of Security Council resolution 1612 (2005), a plan of action to prevent the recruitment and use of children by the Myanmar armed forces and to ensure their release, reintegration and rehabilitation was signed by the Government and the United Nations on 27 June 2012.

33. As a follow-up, eight joint technical committee meetings, with the Government, the International Labour Organization (ILO), the United Nations Children's Fund, the Office of the United Nations High Commissioner for Refugees, Save the Children and World Vision in attendance, have been held to develop an operational procedure and communication mechanisms for the implementation of the action plan. The agreed procedures include modus operandi for the identification, verification and discharge of underage recruits, management of interim care facilities and a dedicated telephone line.

34. A training workshop on the agreed procedures was conducted from 20 to 23 August 2012 to sensitize and train personnel from all the implementing agencies.

35. The implementation of the action plan in line with the agreed procedures is scheduled to commence on 15 October 2012. The implementation of the action plan is a one-time shake-off process towards achieving the delisting of the name of Tatmadaw Kyi from the annex to the report of the Secretary-General on children and armed conflict.

VIII. Elimination of forced labour

36. Appointing a liaison officer in 2002 to assist the Government in eliminating forced labour and establishing a complaints mechanism in 2007 are significant steps taken jointly by the Government and ILO to eliminate forced labour in the country. Domestic laws such as the Ward or Village-tract Administration Law, the by-law and its amendment criminalizing forced labour are now in place.

37. In March 2012, a memorandum of understanding on the joint strategy for the elimination of forced labour in Myanmar by 2015 was signed by the Government and ILO, adding momentum to Myanmar's efforts in eliminating the forced labour. A detailed work programme with timelines to implement the strategy is being implemented with full and active participation of all relevant stakeholders in the country, ILO, non-governmental organizations and other international partners. It is hoped that the goal of eliminating forced labour will be reached before 2015.

38. Tangible progress in combating forced labour has led to the removal of restrictions in June 2012 on the full participation of Myanmar in ILO.

39. In parallel to these developments, 127 basic labour organizations, one labour federation, 11 basic employer organizations and one employer federation have now been formed and are functioning in line with the Labour Organization Law of 2012.

IX. Cooperation with the United Nations

40. Myanmar's emphasis on cooperation with the United Nations is evident in the landmark visit to the country by Secretary-General Ban Ki-moon in May 2012. During his visit, the Secretary-General met with President U Thein Sein and leaders from across the Government, business and civil society. He also met with Daw Aung San Suu Kyi.

41. While in Myanmar, the Secretary-General addressed a combined session of the two houses of Parliament on 30 April 2012. This was the first time Myanmar's Parliament has been addressed by a prominent international figure. The address was broadcast live in both local and international media. The Secretary-General, in his statement, said that the dramatic changes sweeping Myanmar had inspired the world. He also expressed the hope that Myanmar would quickly regain its place as a respected and responsible member of the international community; that Myanmar would quickly catch up with its Asian neighbours and our fast-changing world; and that Myanmar had within it a vast potential to be become a twenty-first-century model for peace, democracy and prosperity.

42. Through these words, the Secretary-General recognized the Government's commitment to democracy, political reform and national reconciliation. At the end of the visit, he called upon the international community to provide support for Myanmar. He said: "I think the international community should provide support — Myanmar deserves it. The international community is responding positively — but much more needs to be done."

43. The dramatic changes taking place in the country have led to the resumption of the normal country programme of the United Nations Development Programme in Myanmar for the period 2013-2015. The Government highly appreciates this positive and timely response by the United Nations.

44. Within the framework of the good offices of the Secretary-General, the Special Adviser, Vijay Nambiar, visited the country in June 2012 at the Government's invitation to gather first-hand information on the situation in Rakhine State.

45. Since the establishment of his mandate by the Commission on Human Rights in its resolution 1992/58, the Special Rapporteur on the situation of human rights in Myanmar has conducted a total of six missions to Myanmar at the invitation of the Government.

46. Cooperation with the United Nations is one of the cornerstones of Myanmar's foreign policy. It will be further strengthened in this new democratic era of the country. The recent visit to New York of President U Thein Sein in his capacity as the first Head of State of Myanmar to participate in the general debate of the General Assembly is an ample demonstration of the importance Myanmar attaches to its cooperation with the United Nations.

X. Conclusion

47. Myanmar strongly believes that the universal periodic review is the best mechanism to monitor the human rights situation of a country. Country-specific resolutions lead to the politicization of human rights situations. They do not create an atmosphere conducive to genuine cooperation to promote and protect human rights. Standing on this as a position of principle, Myanmar always rejects them.

48. It is evident that more needs to be done in the country's democratic transformation process. However, Myanmar can now rightly claim that it is a member of the democratic club. As such, the time is now ripe for putting to an end the practice of tabling a country-specific resolution on Myanmar.

49. No country in the world can boast a perfect human rights record. In this regard, Myanmar is no exception. However, the human rights situation in the country has changed dramatically. Within the 18 months from its establishment, the constitutional Government has launched and made tangible progress in political and socioeconomic reforms. This reform process will continue resolutely. Myanmar represents an exemplary case of peaceful transition to a democratic society which truly deserves encouragement and support from the international community.

50. Myanmar is ushering in a new era. As such it should be seen from a totally new perspective, with no preconceived opinions or prejudice.